

# NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS - 2016 ANNUAL REPORT

## I - PREAMBLE

To the Honorable Governor Doug Burgum and members of the North Dakota Legislative Assembly and North Dakota Supreme Court. The North Dakota Commissioners on Uniform State Laws respectfully submit this annual report.

## II - OVERVIEW OF UNIFORM LAW COMMISSION

The Uniform Law Commission (ULC), also known as the National Conference of Commissioners on Uniform State Laws, has worked for the uniformity of state laws since 1892. The commission is comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the United States Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed. Most jurisdictions provide for their commission by statute. The statutory authority governing North Dakota's Commission on Uniform State Laws can be found in North Dakota Century Code Chapter 54-55.

The single fundamental requirement for the more than 300 uniform law commissioners is that each commissioner must be a member of the bar. While some commissioners serve as state legislators and others as state officials, most are practitioners, judges, and law professors. Uniform law commissioners serve for specific terms, and receive no salaries or fees for their work with the ULC.

Commissioners study and review the laws of the states to determine which areas of law should be uniform. The commissioners promote the principle of uniformity by drafting and proposing specific statutes in areas of the law in which uniformity between the states is desirable. The Uniform Law Commission can make proposals--a uniform law is not effective until a state legislature enacts the uniform state law.

The work of the ULC simplifies the legal life of businesses and individuals by providing rules and procedures that are consistent from state to state. Representing both state government and the legal profession, the ULC is a genuine coalition of state interests. The Uniform Law Commission has sought to bring uniformity to the divergent legal traditions of more than 50 sovereign jurisdictions, and has done so with significant success.

## III - HISTORY

On August 24, 1892, representatives from seven states--Delaware, Georgia, Massachusetts, Michigan, New York, New Jersey, and Pennsylvania--met in Saratoga Springs, New York, to form what is now known as the Uniform Law Commission. By 1912, every state was participating in the ULC. The United States Virgin Islands was the last jurisdiction to join, appointing its first commission in 1988.

Very early on the ULC became known as a distinguished body of lawyers. The Uniform Law Commission has attracted some of the best of the profession. In 1901, Woodrow Wilson became a member. This, of course, was before his more notable political prominence and service as President of the United States. Several persons, later to become Justices of the Supreme Court of the United States, have been members--former Justices Brandeis, Rutledge, and Souter, and former Chief Justice Rehnquist. Legal scholars have served in large numbers, including Professors Wigmore, Williston, Pound, and Bogert. Many more distinguished lawyers have served since 1892.

In each year of service, the ULC steadily increased its contribution to state law. Since its founding, the ULC has drafted more than 200 uniform laws on numerous subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform Acts include the Uniform Probate Code, the Uniform Partnership Act, the Uniform Limited Partnership Act, the Uniform Anatomical Gift Act, the Uniform Interstate Family Support Act, the Uniform Child Custody Jurisdiction and Enforcement Act, and the Uniform Prudent Management of Institutional Funds Act.

Most significant was the 1940 ULC decision to attack major commercial problems with comprehensive legal solutions--a decision that set in motion the project to produce the Uniform Commercial Code. Working with the American Law Institute, the Uniform Commercial Code took 10 years to draft and another 14 years before it was enacted across the country. The Uniform Commercial Code remains the signature product of the ULC.

Today, the ULC is recognized primarily for its work in commercial law, family law, the law of probate and estates, the law of business organizations, health law, and conflicts of law.

The Uniform Law Commission arose of the concerns of state government for the improvement of the law and for better interstate relationships. The Uniform Law Commission's sole purpose has been, and remains, service to state government and improvement of state law.

#### **IV - DIVERSITY STATEMENT**

Each member jurisdiction determines the number of uniform law commissioners the jurisdiction appoints to the ULC, the terms of uniform law commissioners, and the individuals who are appointed from the legal profession of that jurisdiction. The Uniform Law Commission encourages appointing authorities to consider among other factors, diversity of membership in the jurisdictions' uniform law commissions, including race, ethnicity, and gender in making appointments. The Uniform Law Commission does its best work when the uniform law commissioners are drawn from diverse backgrounds and experiences.

#### **V - PROCEDURES**

The Uniform Law Commission is convened as a body once a year. At this annual meeting, the ULC meets for a period of 6 or 7 days, usually in July or August. In the interim period between these annual meetings, drafting committees composed of commissioners meet to supply the working drafts considered at the annual meeting. At each annual meeting, the work of the drafting committees is read and debated. Each Act must be considered over a substantial period of years. An Act does not become officially recognized as a Uniform Act until the ULC is satisfied the Act is ready for consideration in the state legislatures and only then is the Act put to a vote of the states, during which each state caucuses and votes as a unit.

The Uniform Law Commission's governing body is the executive committee, which is composed of the officers, certain ex officio members, and members appointed by the president. Certain ULC activities are conducted by standing committees, for example, the Committee on Scope and Program considers all new subject areas for possible Uniform Acts and the Legislative Committee superintends the relationships of the ULC to the state legislatures.

A small staff located in Chicago operates the national office of the ULC. The national office handles meeting arrangements, publications, legislative liaison, and general administration for the ULC.

The Uniform Law Commission maintains relations with several sister organizations. Official liaison is maintained with the American Bar Association, which provides advisors to all ULC drafting committees and many ULC study committees. Liaison is also maintained with the American Law Institute, the Council of State Governments, the National Conference of State Legislatures, the National Association of Secretaries of State, the Conference of Chief Justices, and the National Center for State Courts on an ongoing basis. Liaison and activities are conducted with other organizations as interests and activities necessitate.

#### **VI - ACTIVITIES OF THE NORTH DAKOTA COMMISSION ON UNIFORM STATE LAWS**

The North Dakota Commissioners are:

- An individual engaged in the practice of law in this state (Jacob T. Rodenbiker);
- The dean or a full-time member of the faculty of the University of North Dakota School of Law (Bradley Myers);
- A law-trained judge of a court of record in this state (Supreme Court Justice Jerod E. Tufte);
- A member of the House of Representatives (Representative Lawrence R. Klemin);
- A member of the Senate of the Legislative Assembly (Senator David Hogue);
- A member of the Legislative Council staff (Jennifer S. N. Clark);
- A member appointed by the Attorney General (Parrell Grossman);
- Any residents of this state who, because of long service in the cause of uniformity of state legislation, have been elected life members of the National Conference of Commissioners on Uniform State Laws (Owen L. Anderson, Jay E. Buringrud, District Judge Gail H. Hagerty); and
- Any residents of this state who have been previously appointed to at least 5 years of service on the commission (William E. Kretschmar, David Nething, Candace Zierdt).

The Uniform Law Commission committee assignments for Commissioners from North Dakota are:

- Owen L. Anderson - Model Tribal Probate Code;
- Jennifer S. N. Clark - Unauthorized Disclosure of Intimate Images Act;
- Gail Hagerty - American Indian Tribes and Nations, Criminal Justice Reform, Family Law Arbitration Act, Interstate Family Support Act (2008), Membership and Attendance, Non-Parental Child Custody and Visitation Act, Revised Parentage Act, Scope and Program, Strengthening State Delegations, Technical Amendments to ULC Acts, and Technology Committee;
- Lawrence R. Klemin - Regulation of Drones, Identity Management in Electronic Commerce, Manufactured Housing Act, Amendments to Revised Law on Notarial Acts, Revised Law on Notarial Acts, and Wage Garnishment Act;
- Bradley Myers - Deployed Parents Custody and Visitation Act, Directed Trust Act, Regulation of Drones, Revised Principal and Income Act, Recognition of Substitute Decision-Making Documents Act, and Trust Decanting Act;
- Jacob T. Rodenbiker - Criminal Records Accuracy Act and Model Veterans Court Act;
- Jerod E. Tufte - Identity Management in Electronic Commerce; and
- Candace Zierdt - American Indian Tribes and Nations, Non-Parental Child Custody and Visitation Act, Revised Law on Notarial Acts, Model Tribal Probate Code, and Amendments to Model Tribal Secured Transactions Act.

Other ULC offices held by Commissioners from North Dakota are:

- Jay E. Buringrud - Legislative Attorneys;
- Jennifer S. N. Clark - Legislative Attorneys;
- Lawrence R. Klemin - Legislative Liaison; and
- William E. Kretschmar - Legislative Liaison.

Meeting held by the North Dakota Commissioners in 2016 was Tuesday, July 12, 2016. North Dakota Commissioners attending the 2016 ULC Annual Meeting were William E. Kretschmar, Owen L. Anderson, Jennifer S. N. Clark, Gail Hagerty, Lawrence R. Klemin, Bradley Myers, Jacob T. Rodenbiker, Jerod E. Tufte, and Candace Zierdt. Legislative appearance by the North Dakota Commissioners in 2016 was a presentation to the Legislative Management's interim Judiciary Committee on Thursday, August 25, 2016.

## **VII - A SUMMARY OF NEW ACTS**

### **Uniform Employee and Student Online Privacy Protection Act**

Today, most individuals have online accounts of some type. These online accounts include social media accounts, bank accounts, and email accounts, among others. Generally, if someone asks for access to the login information for, or content of, a personal online account, an individual is free to say no. However, this is less true in the employment and educational contexts. Employers and educational institutions now sometimes ask current and prospective employees and students to grant the employer or school access to social media or other name and password protected accounts. The Uniform Employee and Student Online Privacy Protection Act addresses both employers' access to employees' or prospective employees' social media and other online accounts accessed via username and password or other credentials of authentication as well as educational institutions' access to students' or prospective students' similar online accounts.

### **Uniform Family Law Arbitration Act**

States' laws vary when it comes to arbitrating family law matters such as spousal support, division of property, child custody, and child support. The Uniform Family Law Arbitration Act standardizes the arbitration of family law. Although the Act is based in part on the Revised Uniform Arbitration Act, it departs from the Revised Uniform Arbitration Act in areas in which family law arbitration differs from commercial arbitration, such as standards for arbitration of child custody and child support, arbitrator qualifications and powers, and protections for victims of domestic violence. This Act is intended to create a comprehensive family law arbitration system for the states. It is an overlay statute meant to work together with the state's existing choice-of-law rules and contractual arbitration law.

### **Revised Uniform Unclaimed Property Act**

The Uniform Law Commission first drafted uniform state legislation on unclaimed property in 1954. Since then, revisions have been made in 1981 and in 1995. Many technological developments in recent years as well as new types of potential unclaimed property, such as gift cards, are not addressed in the most current version of this Act. The Revised Uniform Unclaimed Property Act updates provisions on numerous issues, including escheat of gift cards and other stored-value cards, life insurance benefits, securities, dormancy periods, and use of contract auditors. The revised Act provides a comprehensive and extensive set of revisions, including provisions related to when property is presumed abandoned, which state has custody of property, the recovery of unclaimed property from states by owners, the powers and responsibilities granted to state unclaimed property administrators, and the rights of holders to seek administrative and judicial review of examinations conducted by administrators.

### **Uniform Unsworn Domestic Declarations Act**

The Uniform Unsworn Domestic Declarations Act builds upon the Uniform Unsworn Foreign Declarations Act, which covers unsworn declarations made outside the United States. This new Act permits the use of unsworn declarations made under penalty of perjury in state courts if the declaration was made inside the United States. States that have already enacted the Uniform Unsworn Foreign Declarations Act should enact this Act.

### **Uniform Unsworn Declarations Act**

The Uniform Unsworn Declarations Act builds upon the Uniform Unsworn Foreign Declarations Act, which covers unsworn declarations made outside the boundaries of the United States, and the Uniform Domestic Declarations Act, which covers unsworn declarations made inside the United States. States that have not enacted the Uniform Unsworn Foreign Declarations Act should enact this Act, which essentially combines both the Uniform Unsworn Foreign Declarations Act and the Uniform Unsworn Domestic Declarations Act into one comprehensive Act.

### **Uniform Wage Garnishment Act**

Each state has a different wage garnishment law and process. This means employers that do business across multiple states must know and abide by a different, and often complex, law for each jurisdiction. If an employer makes processing errors calculating garnishments, the employer may face civil penalties. The Uniform Wage Garnishment Act seeks to simplify and clarify wage garnishments for employers, creditors, and consumers by standardizing how the wage garnishment process works and offering plain-language notice and garnishment calculation forms. The Uniform Wage Garnishment Act creates a standard system for wage garnishments which is largely removed from the courts, operates efficiently thereby reducing costs, and provides employees with plain-language notification of employee rights and obligations as well as providing employees with other protections. The Uniform Wage Garnishment Act applies only to what is sometimes called a "debt garnishment," meaning a garnishment by a creditor with a money judgment.

### **Revised Uniform Law on Notarial Acts: Amendment on Foreign Remote Notarization**

The amendment to the revised Uniform Law on Notarial Acts authorizes a notary public to perform notarial acts in the state in which the notary public is commissioned for individuals who are located outside the United States. The amendment is optional for the states. The amendment requires the use of audio and video technologies for real-time communication, and requires the notary to record the interaction. The amendment authorizes the commissioning agency to regulate the technologies used. The act of the individual in making the statement or signing the record may not be prohibited in the foreign state in which the individual is physically located. The certificate affixed by the notary to the record must indicate the notarial act took place while the individual was located in a foreign country.

## **VIII - RECOMMENDATIONS FOR ENACTMENT**

The North Dakota Commission on Uniform State Laws recommend the following Uniform and Model Acts be considered in the legislative session beginning January 2017:

- Uniform Athlete Agent Act, Revised 2015;
- Uniform Fiduciary Access to Digital Assets Act, Revised 2015;
- Uniform Foreign-Country Money Judgments Recognition Act, Revised 2005;
- Uniform Disposition of Community Property Rights at Death Act; and
- Uniform Recognition and Enforcement of Canadian Domestic Violence Protection Orders Act.

The North Dakota Commission on Uniform State Laws recommend the Uniform Family Law Arbitration Act be considered for adoption by the North Dakota Supreme Court as a court rule.